

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Correa Analyst: Deborah Barrett Bill Number: SB 40
 Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: January 6, 2009 & March 9, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information/Social Security Numbers/County Recorder Reject Any Documents that Contain More Than Last 4 Digits of Social Security Number

SUMMARY

This bill would require that only the last four digits of a Social Security Number (SSN) appear on various forms such as judgment orders, birth certificates, or death records and would authorize county recorders to reject the recording of any document with more than the last four digits of the SSN displayed.

SUMMARY OF AMENDMENTS

The February 27, 2009, amendments introduced provisions of the bill that would require only the last four digits of an SSN to appear on birth certificates or death records, and provided clarification that a county recorder could reject for recording documents with more than the last four digits of an SSN. The March 9, 2009, amendments specify that a document containing more than the last four digits of an SSN can not be presented by anyone for recording, and any document containing more than the last four digits of an SSN is not entitled for recording.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to protect potential abuse of SSN information and clarify that a county recorder is required to reject documents that contain more than four digits of an SSN.

EFFECTIVE/OPERATIVE DATE

If passed in the first year of the 2009/2010 Legislative Session, this bill would be effective on January 1, 2010, and would be operative as of that date.

POSITION

Pending.

Board Position:	Department Director	Date
_____ S		
_____ SA		
_____ N		
_____ NA		
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_____ OUA		
_____ NP		
_____ NAR		
_____ X PENDING	Selvi Stanislaus	03/20/09

ANALYSIS

FEDERAL LAW

Internal Revenue Code section 6103 (d) authorizes the IRS to share federal tax information (FTI) with state agencies for tax administration purposes. One of the requirements for the IRS to share FTI with states includes provisions that the state enter into a contract with the federal Department of Health and Human Services to provide the federal government with death record information to be used for purposes of ensuring that federal benefits are not paid to deceased individuals.

STATE LAW

Current California law limits the use of an SSN to the last four digits on an abstract of judgment and other court documents ordering a party to pay money.

Governmental agencies are prohibited from presenting for recording or filing with a county recorder any document that is required to be open to the public that contains more than the last four digits of an SSN, unless it is required by state or federal law. Franchise Tax Board (FTB) is specifically required to truncate social security numbers on lien abstracts and any other records created by FTB that can be disclosed.

Within each county there exists the Social Security Number Truncation Program that requires the county recorder to create a "public record" version of each "official record" maintained in the county recorder files. A "public record" is a record that is an exact copy of an official record except that any SSN contained in the copied filing is truncated. An "official record" is the permanent archival record of all instruments, papers, and notices as accepted for filing by a county recorder.

THIS BILL

This bill would prohibit any person, entity, or government agency from presenting a document for recording or filing that is required by any provision of law to be open to the public if that record displays more than the last four digits of an SSN. The bill would also, unless authorized by state or federal law, provide that a document containing more than the last four digits of an SSN is not entitled for recording. A recorder is considered to be in compliance with these requirements if the recorder uses due diligence to locate the SSN in a document presented for recording or filing.

. This bill would also require that only the last four digits of an SSN appear on the following:

- Judgment orders for spousal, child, or family support;
- Death Record indices compiled for purposes of preventing fraud;
- Death records provided to the county registrar of voters or county clerk, county welfare department, or local district social security office; and
- Certificates of Birth (mother and father SSN).

The bill would require the State Registrar to revise existing birth and death certificates form formats to limit the SSN fields to include only the last four digits of the SSN.

PROGRAM BACKGROUND

FTB uses large volumes of data to administer the state income tax laws and other programs under which delinquent obligations are referred to FTB for collection. The primary identifier used to match records within the tax administration processes is the SSN of the taxpayer. The Department of Health - Vital Statistics provides the death records of all deaths occurring in California on a monthly basis. The information is used to do the following:

- Determine potential audits or as a source to track estate assets
- Accelerate the collection potential of decedent accounts
- Determine whether to contact a non-filer.

The SSN is used as the primary indicator to match death statistic records to income tax records.

FTB obtains FTI from the IRS under the Fed/State data exchange agreements and uses the data extensively for tax administration in its audit and collection programs. California derives substantial revenue from the use of FTI in its audit and collection programs for state income tax. Additionally, as authorized by the IRS, the Employment Development Department and State Board of Equalization share the FTI obtained by FTB for use in the employment tax and sales and use tax programs administered by their respective agencies, also deriving revenue for the state.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Under the bill's provisions, the Registrar would cease collecting the full SSN on death records, which could seriously impair FTB's ability to obtain FTI if the federal government is unable to use data with truncated SSNs. As an alternative, the author may wish to consider allowing the full SSN to continue to be collected on death records but place specific conditions that protect the confidentiality of the data without jeopardizing the revenue associated with FTI.

Because the bill's provisions would eliminate the use of the full SSN in the death records (FTB uses to administer the state income tax), additional programming and system modifications would be required to ensure FTB can match the death records containing only four digits of an SSN against the state income tax database of records that contain the nine digit SSN.

The current internal use of an SSN by a state or local agency provides protection of a deceased individual's identity and efficient use of state resources. The state or local government's internal use of SSNs is not a factor in the cause or increase of identity theft crimes.

LEGISLATIVE HISTORY

SB 216 (Cox, 2007/2008) would have limited the use of an SSN to the last four digits on an abstract of judgment and other court document ordering a party to pay money. This bill was referred to the Committee on Judiciary but was not heard in committee.

SB 644 (Correa et. al, Stats. 2007, Ch. 189) limits the use of an SSN to the last four digits on an abstract of judgment and other court document ordering a party to pay money.

FISCAL IMPACT

FTB would be required to develop a new program to match the four digit SSN on a death record against a nine digit SSN in the state income tax record database. Other changes to existing programs and processes may be required to the extent that FTB's access to FTI is compromised as a result of the changes required by this bill. A cost estimate will be developed as the bill progresses through the legislative process.

ECONOMIC IMPACT

Estimated Revenue Impact of SB 40 For Documents Filed or Recorded After 1/1/10 Enactment Assumed After 6/30/09 (\$ in Millions)		
2008-09	2009-10	2010-11
-\$150	-\$300	-\$300

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion:

Eliminating complete SSNs on county records could impact the department by the following:

1. Prolonging the match process for probate/decedent cases, thus the department will not be able to file timely claims against estates, and
2. Puts at risk the revenue attributable to FTI, which is conditioned on the IRS receiving death record data from California to share FTI with the tax agencies in California.

Direct Impact to FTB - Decedent Unit Collections

For fiscal year 2007-08, based on county data, timely matches resulted in collections of \$15 million. Limiting the number of digits tracked by counties would reduce the amount of revenue collected by the decedent unit. Relying on other data sources to identify and match a decedent to FTB's records is anticipated to prolong the probate claim process, resulting in losses of up to 2% of current collections or about \$300,000 per year.

Indirect Impact to Federal/State Data Agreement

The potential of losing FTI could have a substantial impact on state income tax revenues. FTB receives records from the IRS that assist FTB to identify and issue assessments of tax on individual and corporate taxpayers.

For fiscal year 2006-07, FTI data contributed to the collection of approximately \$400 million. \$200 million (\$400 million x 50%) of this revenue resulted from federal audit determination reports, which enables FTB to identify applicable California income tax adjustments. Eliminating this source places the entire \$200 million at risk of going uncollected. For the remaining \$200 million in collections that result from FTI, assuming that collection on these liabilities are reduced by 50%, this bill would result in annual losses of \$100 million.

The combined revenue impact of this proposal is estimated to total, at a minimum, approximately \$300 million (\$300,000 probate collections + \$200 million Federal adjustment reports + \$100 million other collection activity). Assuming the contract with the IRS would be unenforceable on the proposal's effective date of January 1, 2010, revenue losses would begin during fiscal year 2009-10. The revenue in the chart follows accrual rules and is shifted back one fiscal year.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Deborah Barrett
(916) 845-4301
deborah.barrett@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521
patrice.gau-johnson@ftb.ca.gov